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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,424	08/05/2003	Yoshimi Tsujiyama	JCLA11962	7330
23900	7590	08/25/2006	EXAMINER	
J C PATENTS, INC. 4 VENTURE, SUITE 250 IRVINE, CA 92618			TORRES VELAZQUEZ, NORCA LIZ	
			ART UNIT	PAPER NUMBER

1771

DATE MAILED: 08/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/635,424	TSUJIYAMA ET AL.	
	Examiner	Art Unit	
	Norca L. Torres-Velazquez	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-7 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-7 and 11-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 13, 2006 has been entered.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-7 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over SISSON (US 4,107,364) in view of COLLIER IV (US 5,260,126).

SISSON discloses a cloth structure comprising at least two types of organic polymer fibers, at least one of which is elastomeric and at least one of which is elongatable but non-elastic. Each of the non-elastic and elastomeric fibers comprises separately melt spun textile denier filaments. The elastomeric filaments comprise approximately 10-90%, by weight, of the cloth. The reference further teaches that the elastomeric fiber comprises polyurethane. (Refer to Abstract; Claims 1-2, 4, 22, 29-31) The reference teaches that at least two separate streams of monofilaments of one or more fiber forming synthetic organic polymers are melt spun through one or more preferably linear dies or spinnerettes from one or more extruders. (Col. 6, lines 42-47) The reference further teaches that additional layers may be incorporated into the cloth. (Col.

14, lines 39-42) Example I of the reference teaches a nonwoven elastic cloth made of polyester filaments of 3.6 denier and polyester type polyurethane polymer fiber forming elastomer filaments of 5.4 denier. (Refer to Col. 15, lines 43-46; Col. 16, line 48; Col. 17, lines 3, 18) While it is not possible for the Examiner to determine the diameter (in microns) of the fibers disclosed by the reference, based on the deniers disclosed the Examiner is able to determine $(B_d)/(A_d)$ as being $5.4/3.6=1.5$, which reads on the claimed ratio of no less than the value of $25/18=1.39$. Since the reference uses a similar process for producing the fibers, it is the Examiner's interpretation that fibers with the claimed diameters will fall within the micron level values claimed in the present invention.

The Examiner further provides COLLIER IV to provide motivation for the use of micron level diameters in elastic nonwoven webs of fibers.

COLLIER, IV et al. discloses elastic nonwoven webs of fibers. The reference teaches materials suitable for use in applications such as disposable garments. (Col. 1, lines 24-26) The reference teaches that the elastic nonwoven web of fibers may be a web of meltblown fibers or spunbonded fibers. The elastic nonwoven web may also include at least one type of nonelastic fibers, for example nonelastic microfibers, which are distributed within or upon the matrix. If nonelastic fibers are present in the elastic nonwoven web, the elastic nonwoven web may generally include from about 20 percent, by weight, to about 99 percent, by weight, of fibers formed from a styrene-poly (ethylene propylene)-styrene blend and from about 1 percent, by weight to 80 percent, by weight, of the nonelastic fibers. (Col. 5, lines 1-37) On Table 1 of the reference, some physical properties of the styrene-poly(ethylenepropylene)-styrene block copolymer used by the reference are disclosed. (Col. 7) With regards to the average diameter of

the fibers and the relation of diameters between the elastomeric and nonelastomeric fibers, it is the Examiner's interpretation that the teaching of using micro fibers (of diameters of about 100 microns or less, for example, 0.5-50 microns) reads on the values claimed herein. (Refer to col. 2, lines 28-33)

Although SISSON does not explicitly teach the claimed properties of elongation recovery rate or separation resistance it is reasonable to presume that these properties are inherent to the cloth structure of SISSON. Support for said presumption is found in the use of like materials (i.e. a homogeneous blend of continuous elastomeric filaments and non-elastomeric filaments produced by melt-spun). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of properties of elongation recovery rate or separation resistance would obviously have been present one the SISSON product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection made above under 35 USC 102.

Since both references are directed to elastic webs, the purpose disclosed by COLLIER IV would have been recognized in the pertinent art of SISSON.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the diameter of the fiber to be within the microfiber diameter range (under 100 microns) with the motivation of providing a material suitable for the construction of disposable garments as disclosed by COLLIER IV (Col. 1, lines 11-25)

Response to Arguments

4. Applicant's arguments with respect to claims 1, 3-7 and 11-13 have been considered but are moot in view of the new ground(s) of rejection.

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-1484. The examiner can normally be reached on Monday-Thursday 8:00-5:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Norca L. Torres-Velazquez
Primary Examiner
Art Unit 1771

August 15, 2006